UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
FORT WAYNE DIVISION

CHARLES CAMERON MORSE,	)	
	)	
Plaintiff,	)	
	)	
v.	)	**CAUSE NO. 1:03-CV-089**
	)	
MEDISYSTEMS CORPORATION,	)	
	)	
Defendant.	)	

MEMORANDUM OF DECISION AND ORDER

I. INTRODUCTION

Defendant Medisystems Corporation ("Medisystems") moves for leave to amend its Answer to Plaintiff Charles Cameron Morse's ("Morse") Complaint. After considering the motion and the relevant law, the Court finds that the motion should be GRANTED.

II. PROCEDURAL BACKGROUND

Morse filed his Complaint on January 31, 2003, alleging that he contracted Hepatitis C after being stuck with a defective needle manufactured by Medisystems. (Compl. ¶¶ 6-8.) Medisystems filed an Answer on March 28, 2003. (Docket # 8.) This Court conducted a preliminary pretrial conference on April 15, 2003, at which it set a May 26, 2003, deadline for amendment of the pleadings, a November 13, 2003, deadline for close of discovery, and a December 13, 2003, deadline for dispositive motions. (Docket # 11.)

Medisystems amended its Answer on May 2, 2003, before the deadline for doing so. (Docket # 18.) After receiving an extension of the dispositive motions deadline, Medisystems moved for summary judgment on March 22, 2004. (Docket # 25.) Morse responded on June 8, 2004. (Docket # 34.)

On June 11, 2004, Medisystems substituted new counsel. (Docket # 37, 38.) Medisystems then made two successive motions to extend the deadline for filing its summary judgment reply brief, which this Court granted. (Docket # 41, 43.) On July 19, 2004, Medisystems filed the instant motion to amend its Answer. (Docket # 47.)

Finally, on August 10, 2004, following an unopposed motion by Medisystems, this Court vacated all pending deadlines in the case. (Docket # 53.) A scheduling conference is currently set for August 19, 2004, to set new deadlines and discuss the possibility of allowing Medisystems to either supplement its summary judgment motion or withdraw it without prejudice to later refiling. (*Id.*)

III. STANDARD OF REVIEW

A party may amend its pleading once as a matter of course at any time before a responsive pleading is served; otherwise, it may amend only by leave of the court or by written consent of the adverse party. Fed. R. Civ. P. 15(a). Leave to amend is freely given when justice so requires. *Id.* However, this right is not absolute, *Brunt v. Serv. Employees Int'l Union*, 284 F.3d 715, 720 (7th Cir. 2002), and can be denied for undue delay, bad faith, dilatory motive, prejudice, or futility, *Ind. Funeral Dir. Ins. Trust v. Trustmark Ins. Corp.*, 347 F.3d 652, 655 (7th Cir. 2003).

Moreover, the requirements of Rule 15 must be read in conjunction with the requirements of Rule 16, because "[o]nce the district court [has] filed a pretrial scheduling order pursuant to [Rule] 16 which establish[es] a time table for amending pleadings that rule's standards [control]." *Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604, 607-08 (9th Cir. 1992); *Kortum v. Raffles Holdings, Ltd.*, 2002 WL 31455994, *3 (N.D. Ill. Oct. 30, 2002); *Tschantz v. McCann*, 160

F.R.D. 568, 570-71 (N.D. Ind. 1995). Rule 16 provides in part:

> (b) [The district court] . . . shall, after receiving the report from the parties under Rule 26(f)[,] . . . enter a scheduling order that limits the time (1) to join other parties and to amend the pleadings; (2) to file and hear motions; and (3) to complete discovery . . . . A schedule shall not be modified except upon a showing of good cause and by leave of the district judge or, when authorized by the Local Rule, by a magistrate judge.

Fed. R. Civ. P. 16(b). Thus, a party seeking to amend a pleading after the date specified in a scheduling order must first show "good cause" for the amendment under Rule 16(b); then, if good cause is shown, the party must demonstrate that the amendment is proper under Rule 15. *Tschantz*, 160 F.R.D. at 571. "A court's evaluation of good cause is not co-extensive with an inquiry into the propriety of the amendment under . . . Rule 15." *Id.* (quoting *Johnson*, 975 F.2d at 609). Rather, the good cause standard focuses on the diligence of the party seeking the amendment. *Id*. In other words, to demonstrate good cause, a party must show that despite its diligence, the time table could not reasonably have been met. *Id.*

IV. DISCUSSION

Medisystems wishes to amend its Answer in order to add new affirmative defenses and new non-party defenses. Since the deadline for amendment has passed, Medisystems must first show good cause for extension of the deadline under Rule 16 and then show that the amendment is proper under Rule 15. As detailed below, Medisystems succeeds on both counts.

Good cause exists because the new defenses Medisystems wishes to assert are based on recently discovered evidence. By agreement of the parties, much discovery has taken place after the formal discovery deadline; for instance, depositions were taken as late as January 2004, and Morse did not identify his expert witness until June 2004. (Br. in Supp. of Mot. to Amend at 3-4.) Medisystems contends that the new defenses are based on information gleaned from this

recent discovery, and that they accordingly could not have been asserted before the May 26, 2003, deadline. Morse does not dispute this contention.[1] Accordingly, the Court finds that, despite its diligence, Medisystems could not have added the new defenses before the deadline for amendment, due to its recent discovery of new evidence. *See Michalik v. Huron and Eastern R.R. Co.*, No. 02-10105-BC, 2004 WL 1765519, at *2 (E.D. Mich. July 30, 2004) (noting that new evidence can be good cause for extension); 3 James Wm. Moore et al., *Moore's Federal Practice* § 16.14.[1][b] (3d ed. 2003). Accordingly, good cause exists under Rule 16 to allow amendment after the deadline.

Medisystem's proposed amendment also satisfies the requirements of Rule 15. It is well settled that "in the absence of any apparent or declared reason – such as . . . undue prejudice to the opposing party by virtue of allowance of the amendment . . . – the leave sought should, as the rules require, be 'freely given.'" *Foman v. Davis*, 371 U.S 178, 182 (1962). Here, Morse claims prejudice, arguing that "[t]he addition of non-party defendants prevents him from asserting claims against those non-parties, because of the expiration of the statute of limitations." (Pl.'s Resp. at 1.) However, the new non-party defendants are merely successors or affiliates of a non-party defendant who was already named in Medisystems's original answer of March 28, 2003. (Reply at 3.) Morse therefore fails to show *any* prejudice from the proposed amendment, much less "*undue* prejudice." *Foman*, 371 U.S. at 182 (emphasis added). Accordingly, the proposed

[1]Morse offers the conclusory argument that the new defenses "could have been, and should have been, asserted long ago," but he provides no citations or further argumentation to support the point. (Pl.'s Resp. at 1.) In fact, his entire response to Medisystems's motion to amend is only half a page long, and it contains no citations to the record or to any legal authority. (*See id.*)

amendment is permissible under Rule 15.[2]

V. CONCLUSION

Because Medisystems has shown good cause under Rule 16 for belatedly amending its Answer and has demonstrated the propriety of its proposed amendment under Rule 15, its motion for leave to amend is hereby GRANTED. The Clerk is directed to show the proposed amended answer filed. (Docket # 47, Ex. A.)

Enter for this 13th day of August, 2004.

/S/ Roger B. Cosbey
Roger B. Cosbey,
United States Magistrate Judge

[2]Moreover, amendment causes no prejudice to the Court's management of this case, given that no trial date is currently set and all deadlines have been temporarily vacated.

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